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Leisure Centers, Incorporated d/b/a Grand River Village and Local 243, International Brotherhood of Teamsters, AFL-CIO. Case 7-CA-41570

February 12, 1999

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Pursuant to a charge filed on November 27, 1998, the General Counsel of the National Labor Relations Board issued a complaint on December 23, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish relevant and necessary information following the Union's certification in Case 7-RC-20797. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On January 19, 1999, the General Counsel filed a Motion for Summary Judgment. On January 22, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of the Board's overruling of the challenge to the ballot of employee Justin West in the representation proceeding. Specifically, the Respondent reiterates its contentions, raised and rejected in the representation case, that West was ineligible to vote because he was a statutory guard and, in any event, was not employed by the Respondent on the date of the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that the Union requested the following information from the Respondent on November 9, 1998:

- (1) Current name and address of all current employees.
- (2) Wage rates of all current employees.
- (3) Copy of the current insurance and pension programs under which the employees are covered.
- (4) Copy of the current policy for vacation, holidays, and sick days.

In its answer, the Respondent relies on its challenge to the Union's certification as a defense to its refusal to provide the Union with the requested information. Further, the Respondent contends that the requested information is "confidential and proprietary and cannot be disclosed." It is well established that the foregoing type of compensation and employment information sought by the Union, including unit employees' home addresses, is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.¹ The Respondent has not attempted to rebut the relevance of the information requested by the Union. In addition, the Respondent's claim that the requested information is confidential and proprietary is unsupported and does not raise an issue warranting a hearing. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union. See *Verona Dye-stuff Division*, 233 NLRB 109, 110 (1977).

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and facility in Farmington Hills, Michigan, has been engaged in the operation and management of an assisted living facility. During the 12-month period ending December 31, 1997, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000, and purchased supplies valued in excess of \$10,000 from suppliers located outside the State of Michigan and caused those supplies to be shipped directly to its Farmington Hills, Michigan facility. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a

¹ See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

labor organization within the meaning of Section 2(5) of the Act.²

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 5, 1996, the Union was certified on October 28, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by Respondent at its facility located at 36550 Grand River, Farmington Hills, Michigan, including dietary employees, wait staff, cooks, dishwashers, housekeepers, maintenance employees and catered life employees; but excluding dining room supervisors, beauty salon employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since November 9, 1998, the Union has requested the Respondent to bargain and to furnish the information described above, and, since November 20, 1998, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 20, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested by it on November 9, 1998.

² The Respondent's answer and response to the Notice to Show Cause contend that the complaint's jurisdictional allegations are defective because they allege commerce facts for the calendar year ending December 31, 1997, and the alleged unfair labor practices occurred in November 1998. The Respondent, however, stipulated to the Board's jurisdiction over it in the representation case, and the Respondent's answer admits the factual bases of the Board's assertion of jurisdiction set forth in the complaint. Further, the Respondent does not assert that its revenues and purchases for 1998 dropped below the Board's discretionary jurisdictional standards. Accordingly, we find no merit in the Respondent's contentions regarding the jurisdictional issue.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Leisure Centers, Incorporated d/b/a Grand River Village, Farmington Hills, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 243, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by Respondent at its facility located at 36550 Grand River, Farmington Hills, Michigan, including dietary employees, wait staff, cooks, dishwashers, housekeepers, maintenance employees and catered life employees; but excluding dining room supervisors, beauty salon employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees, including the information requested by it on November 9, 1998.

(c) Within 14 days after service by the Region, post at its facility in Farmington Hills, Michigan, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Re-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

gion 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 20, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 12, 1999

Sarah M. Fox,	Member
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 243, International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees employed by us at our facility located at 36550 Grand River, Farmington Hills, Michigan, including dietary employees, wait staff, cooks, dishwashers, housekeepers, maintenance employees and catered life employees; but excluding dining room supervisors, beauty salon employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

WE WILL provide the Union with the information it requested on November 9, 1998.

LEISURE CENTERS, INCORPORATED D/B/A
GRAND RIVER VILLAGE